MOTION FILED
JAN 2 1 2000

No. 99-1081

IN THE
Supreme Court of the United States

TOWN OF MULDROW, AND THE
MULDROW PUBLIC WORKS AUTHORITY,
Petitioners,
v.
SEQUOYAH COUNTY RURAL
WATER DISTRICT NO. 7,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF OF THE ALABAMA WATER AND WASTEWATER INSTITUTE AND THE ALABAMA LEAGUE OF MUNICIPALITIES AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

ROBERT E. SASSER *
TAMARA A. STIDHAM
THOMAS R. HEAD, III
SIROTE & PERMUTT, P.C.
One Commerce Street, Suite 700
P.O. Drawer 4539
Montgomery, Alabama 36103-4539
(334) 261-3400
* Counsel of Record

WILSON-EPES PRINTING CO., INC. - (202) 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

No. 99-1081

TOWN OF MULDROW, AND THE
MULDROW PUBLIC WORKS AUTHORITY,
Petitioners,

v.

SEQUOYAH COUNTY RURAL
WATER DISTRICT NO. 7,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

The Alabama Water and Wastewater Institute (hereinafter "AWWI") and the Alabama League of Municipalities (hereinafter the "League") respectfully move this Court for leave to file the accompanying brief in this case as *amici curiae*. The consent of counsel for the petitioners herein has been obtained and filed with the clerk of this Court, but counsel for the respondent herein has refused to consent to the filing of a brief by AWWI and the League as *amici curiae*.

AWWI is a non-profit organization representing fourteen of the largest water producers in the State of Alabama. Its members are public corporations and municipal boards organized and existing pursuant to Acts of the Legislature of Alabama for the purpose of operating water

and/or sanitary sewer facilities within the State of Alabama. The applicant, AWWI, has an interest in this case in that there are over 700 rural water systems (hereinafter "rural water authorities") eligible for federal rural development loans in the State of Alabama. Of these, a substantial number have received loans from the Farmers Home Administration ("FmHA") and its successor agency (the USDA Rural Utilities Service, PL 103-354), and consequently enjoy the protection provided by 7 U.S.C. § 1926(b). Members of AWWI routinely provide service to rural water customers to whom service would otherwise be unavailable and have a decided interest in protecting their investments in rural water development. If adopted by the United States Court of Appeals for the Eleventh Circuit, the decision in this case could cause members of AWWI to forfeit substantial amounts of infrastructure and other capital investments and would deter future rural water development by municipalities and other public bodies.

The League is a voluntary association representing approximately 435 cities and towns in the State of Alabama. Members of the League represent roughly 99 percent of the urban population of the State of Alabama. The applicant, the League, has an interest in this case in that many of its members operate water systems, either through the municipal council or through boards appointed by the council. These systems also frequently provide water service to customers in rural areas. The decision in this case directly impacts the ability of municipal systems to develop water service in these areas by deterring municipal expansion for fear of retroactively losing their investment.

The brief of the petitioners herein argues that the United States Court of Appeals for the Tenth Circuit erroneously held that 7 U.S.C. § 1926(b) prohibited the

Town of Muldrow from continuing service to water customers in the respondent's service area after the respondent obtained a loan from the FmHA, even though the municipality began serving those customers prior to the date of the loan. However, the discussion therein does not fully address the constitutional implications created by the holding of the Tenth Circuit. In support of the petitioners herein, AWWI and the League propose that the Tenth Circuit's broad interpretation of § 1926(b) protection raises legitimate constitutional concerns. Under the Tenth Circuit's construction, a municipality or other public body lawfully supplying water to rural customers could be forced to discontinue service, and thereby lose its capital investments, merely upon the extension of a federal loan to a neighboring rural water authority. There is no evidence that Congress intended such a result in enacting § 1926(b). The implication of the Tenth Circuit's interpretation of § 1926(b) raises Fifth Amendment Takings issues and Due Process concerns due to its retroactive effect on the municipalities and public boards.

If the applicants' position is accepted by this Court, the decision of the court below must be reversed.

Respectfully submitted,

ROBERT E. SASSER *
TAMARA A. STIDHAM
THOMAS R. HEAD, III
SIROTE & PERMUTT, P.C.
One Commerce Street, Suite 700
P.O. Drawer 4539
Montgomery, Alabama 36103-4539
(334) 261-3400
* Counsel of Record

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICI CURIAE*	1
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	4
ARGUMENT	5
CONCLUSION	13

TABLE OF AUTHORITIES

CASES — Page

Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211 (1986) 5, 9
Cromwell v. Benson, 285 U.S. 22 (1932) 8
CSL Utilities, Inc. v. Jennings Water, Inc., 16 F.3d 130 (7th Cir. 1993) 6
Eastern Enterprises v. Apfel et al., 524 U.S. 498 (1998) 5, 11
Edward J. Debartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568 (1988) 4, 7, 11
Hooper v. California, 155 U.S. 648 (1895) 8
Jennings Water, Inc. v. City of North Vernon, Indiana, 895 F.2d 311 (7th Cir. 1989) 6
Lexington-South Elkhorn Water Dist. v. City of Wilmore, Kentucky, 93 F.3d 230 (6th Cir. 1996) 6
Machinists v. Street, 367 U.S. 740 (1961) 4
NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979) 4, 8
North Alamo Water Supply Corp. v. City of San Juan, Texas, 90 F.3d 910 (5th Cir. 1996) 6
Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978) 9
Public Citizen v. U.S. Dept. of Justice, 491 U.S. 440 (1989) 8
Rust v. Sullivan, 500 U.S. 173 (1991) 4, 8
Sequovah County Rural Water Dist. No. 7 v. Town of Muldrow, 191 F.3d 1192 (10th Cir. 1999) 3, 4, 7, 9
St. Martin Evangelical Church v. South Dakota, 451 U.S. 772 (1981) 4

STATUTES AND CONSTITUTIONAL PROVISIONS

The Takings Clause, U.S. Const. Amend. V ..... *passim*
7 U.S.C. § 1926(b) ..... *passim*

IN THE

Supreme Court of the United States

No. 99-1081

TOWN OF MULDROW, AND THE
MULDROW PUBLIC WORKS AUTHORITY,
Petitioners,

v.

SEQUOYAH COUNTY RURAL
WATER DISTRICT NO. 7,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF THE ALABAMA WATER AND WASTEWATER INSTITUTE AND THE ALABAMA LEAGUE OF MUNICIPALITIES AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF AMICI CURIAE

The Alabama Water and Wastewater Institute (hereinafter "AWWI") and the Alabama League of Municipalities (hereinafter the "League") respectfully submits the following brief as *amici curiae* in support of the Petition for a Writ of Certiorari.*

* Consent of counsel for the petitioners herein has been obtained and filed with the clerk of this Court. However, counsel for the respondent has refused to consent to the filing of this brief. Pursuant to Rule 37.6, *amici curiae* hereby certify that no counsel for either party has authored the brief, in whole or in part, and that no person or entity, other than the *amici curiae*, their members, or counsel, have made monetary contributions to the preparation or submission of this brief.

AWWI is a non-profit organization representing fourteen of the largest water producers in the State of Alabama. Its members are public corporations and municipal boards organized and existing pursuant to Acts of the Legislature of Alabama for the purpose of operating water and/or sanitary sewer facilities within the State of Alabama. Similarly, the League is a voluntary association representing approximately 435 cities and towns in the State of Alabama, a number of which operate water systems and sanitary sewer faciilties. The applicants, AWWI and the League, have an interest in this case in that there are over 700 rural water systems (hereinafter "rural water authorities") eligible for federal rural development loans in the State of Alabama and a substantial number have received loans from the Farmers Home Administration (hereinafter "FmHA") and its successor agency (the USDA Rural Utilities Service, PL 103-354). Consequently, these water associations enjoy the protection provided by 7 U.S.C. § 1926(b). Members of AWWI and the League routinely provide service to rural water customers to whom service would otherwise be unavailable and have a decided interest in protecting their investments in rural water development. If adopted by the United States Court of Appeals for the Eleventh Circuit, the Tenth Circuit's decision in this case could cause members of AWWI and the League to forfeit substantial amounts of infrastructure and other capital investments and would deter future rural water development by municipalities and other public bodies.

In support of the petitioners herein, the AWWI and the League propose that the Tenth Circuit's broad interpretation of § 1926(b) protection raises legitimate constitutional questions. Under the Tenth Circuit's construction, a municipality or other public body lawfully supplying water to rural customers could be forced to discontinue service, and thereby lose its capital investments, merely upon the extension of a federal loan to a neigh-

boring rural water authority. Such a result will greatly impact water services provided to rural customers.

STATEMENT OF THE CASE

Although the facts of this case have been fully set forth in the briefs and opinions below, the following facts bear restating for purposes of this brief. The Petitioner, Town of Muldrow (hereinafter "Muldrow"), owns and operates a water plant and distribution system within its corporate boundaries. *Sequoyah County Rural Water Dist. No. 7 v. Town of Muldrow,* 191 F.3d 1192, 1194 (10th Cir. 1999). The Respondent, Sequoyah County Rural Water District No. 7 (hereinafter "Sequoyah"), is a rural water district incorporated to develop and provide water service to rural residents within its territory. *Id.*

As a rural water association, Sequoyah and its predecessors have obtained loans from the Farmers Home Administration (hereinafter "FmHA") on four occasions. *Sequoyah,* 191 F.3d at 1194-95. The first period of indebtedness began in 1969 with the first of three notes and ended in 1989 when Sequoyah satisfied all of its FmHA loans in full. *Id.* The second period of indebtedness began on September 28, 1994 when Sequoyah obtained a fourth FmHA loan. *Id.* After Sequoyah paid off its first series of loans but before it became indebted to the FmHA in 1994, Muldrow began providing water service to rural customers and continued to provide service to these customers after Sequoyah obtained the 1994 loan. *Id.* Sequoyah claimed that Muldrow violated 7 U.S.C. § 1926(b) by continuing to provide water service to customers within contested service area, after Sequoyah obtained the 1994 loan.[1]

---

[1] 7 U.S.C. § 1926(b) protects FmHA loans by providing, in pertinent part, that service "made available" by FmHA indebted associations ". . . shall not be curtailed or limited . . . during the term of such loan; . . ."

The district court granted Muldrow's Motion for Summary Judgment, holding that the protection of § 1926(b) did not apply because Sequoyah had not "made service available" to the contested water customers. *Sequoyah,* 191 F.3d at 1196. On appeal, the United States Court of Appeals for the Tenth Circuit (hereinafter "Tenth Circuit") in reversing the district court's decision and remanding the case based upon perceived issues of fact, held that water services previously provided by Muldrow and continuing during the term of Sequoyah's 1994 loan are actionable even though Muldrow first initiated water service to the disputed customers prior to Sequoyah's indebtedness. According to the Tenth Circuit, Sequoyah "may recover for encroachments occurring *or continuing after* . . . the date on which it obtained [the 1994] loan from the FmHA, so long as it establishes that it made service available to those customers." *Id.* at 1206. Because the retroactive application of § 1926(b) promulgated by the Tenth Circuit prohibits a municipality from continuing to use its property, *amici curiae* file this brief in support of the petitioner to raise to this Court the constitutional implications of this decision.

SUMMARY OF ARGUMENT

This Court has articulated clear canons of construction which must be followed in the construction and application of a statute. Fundamentally imbedded in those canons of construction are the principles that a court should construe a statute so as to comply with its plain meaning and, perhaps more importantly, to avoid giving rise to any constitutional issues created by the construction. *See Rust v. Sullivan,* 500 U.S. 173 (1991); *see also Edward J. Debartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council,* 485 U.S. 568 (1988); *St. Martin Evangelical Church v. South Dakota,* 451 U.S. 772 (1981); *NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490 (1979); *Machinists v. Street,* 367 U.S. 740 (1961). The

Tenth Circuit has articulated a construction of the statute at issue, 7 U.S.C. § 1926(b), which does not comply with these fundamental canons of construction. If accepted, the holding of the Tenth Circuit propagates a statutory scheme whereby a municipality or other public body lawfully supplying water to rural customers may be forced to abandon its property and service to customers, merely upon the extension of a federal loan to a rural water authority, without any notice or compensation to the municipality. Such an interpretation raises issues concerning a violation of the Takings Clause of the Fifth Amendment, as well as, Due Process. *See Eastern Enterprises v. Apfel, et al.*, 524 U.S. 498 (1998); *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1986). Moreover, such a construction is not necessary to give meaning to the statute and to comply with congressional intent. Accordingly, the holding of the Tenth Circuit, expanding the reach of § 1926(b) beyond constitutional limitations, should be reversed.

ARGUMENT

This Court is presented with the age-old question of the construction and application of a federal statute. Although proper statutory construction is a fundamental duty of the judicial system, a mere request to articulate general guidelines regarding a statute generally would not provide sufficient basis for granting a Writ of Certiorari. However, where a statute is construed and applied in a manner that goes beyond its plain meaning and, more significantly, gives rise to constitutional considerations, it is incumbent on this Court that the issues raised be addressed to insure that the application of the statute is in full compliance with the Constitution.

The matter before this Court concerns the construction and application of 7 U.S.C. § 1926(b).[2] Section 1926(b)

[2] All references to § 1926(b) shall be to 7 U.S.C. § 1926(b).

provides rural water associations, during the term of a FmHA loan, certain protections from actions by municipalities and public boards, which curtail the services made available by the rural water association. The statute at issue reads:

> The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

7 U.S.C. § 1926(b).

Heretofore, the courts considering § 1926(b) have generally recognized that to receive the protection provided by § 1926(b) a water association must (1) have a current obligation to FmHA and (2) have provided or made available services to the area in dispute. *See Lexington-South Elkhorn Water Dist. v. City of Wilmore, Kentucky*, 93 F.3d 230 (6th Cir. 1996); *North Alamo Water Supply Corp. v. City of San Juan, Texas*, 90 F.3d 910, 914 (5th Cir. 1996); *CSL Utilities, Inc. v. Jennings Water, Inc.*, 16 F.3d 130 (7th Cir. 1993); *Jennings Water, Inc. v. City of North Vernon, Indiana*, 895 F.2d 311, 315 (7th Cir. 1989). Despite this general recognition, the courts have differed regarding the standard for determining whether services have been made available by the rural water association. Nevertheless, the courts have only applied the protections and prohibitions of § 1926(b) to actions

taken after the protection of § 1926(b) attached. The Tenth Circuit, through its decision in this case, now recognizes and expands § 1926(b) to prohibit an otherwise lawful activity upon the happening of a specific event, which is outside of the control of the acting party. *Sequoyah,* 191 F.3d at 1206.

The Tenth Circuit would, without any recitation to congressional intent for such a construction or other concurring authority, apply the limitations created by § 1926(b) to require the abandonment of lawfully originated water services, and all rights, duties and obligations associated therewith, of a municipality in favor of a rural water association, which subsequently obtains a FmHA loan and attempts to claim § 1926(b) protection. Such a construction fails for a number of reasons. First, it is contrary to the plain language of the statute. Second, if allowed to stand, such an interpretation of the statute deprives municipalities of their right to Due Process and violates the Takings Clause of the Fifth Amendment because it effectively terminates pre-existing property rights without any notice, hearing, or compensation for the value lost. Until this Court articulates the reach and scope of the protections to be afforded by § 1926(b), other courts will continue to grasp at the limitations created by the statute and, if the Tenth Circuit's interpretation is accepted, subject municipalities and public bodies to an unjust taking of property rights. A statement is needed from this Court to establish conclusively the proper scope of and limitations on the protections created by § 1926(b).

It is well-settled that statutes should be construed to avoid constitutional questions. "[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *DeBartolo,* 485 U.S.

at 575 (citing *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 504 (1979)). "The elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Hooper v. California*, 155 U.S. 648, 657 (1895). "When the validity of an act of Congress is drawn into question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 465-466 (1989) (citing *Cromwell v. Benson*, 285 U.S. 22, 62 (1932)). As this Court recognized in *Public Citizen*, a court should be "loath to conclude that Congress intended to press ahead into dangerous constitutional thickets in the absence of firm evidence that it courted those perils." *Id.* at 466. "This canon is followed out of respect for Congress, which we assume legislates in light of constitutional limitations." *Rust v. Sullivan*, 500 U.S. 173, 191 (1991).

Despite such strong admonitions from this Court that the construction and application of a statute should not raise constitutional issues, the Tenth Circuit has in fact implicated constitutional considerations without any showing of congressional intent to so do. The FmHA loan on which the Tenth Circuit relies to extend protection to Sequoyah, was funded on September 28, 1994. Prior to September 28, 1994, Muldrow began providing water services to a number of water customers that are the issue of this dispute. In order to provide such services, Muldrow invested time and capital expenditures to create water facilities and services which would meet the needs of the customers. At the time Muldrow made such an investment and began providing the services there was

nothing limiting its actions. Furthermore, Muldrow's actions were lawful under state and federal law. Subsequent to the establishment of the services by Muldrow, Sequoyah obtained a FmHA loan. Although the loan was obtained in 1994, Sequoyah did not challenge the continued service of these customers by Muldrow or seek relief pursuant to § 1926(b) until 1997. With respect to these pre-existing services the Tenth Circuit held that Sequoyah "may recover for encroachments occurring or continuing after September 28, 1994, the date on which it obtained another loan from FmHA, so long as it establishes that it made services available to those customers." *Sequoyah,* 191 F.3d at 1206. By construing § 1926(b) to retroactively extend to the continuation of pre-existing services during the term of the loan, the Tenth Circuit effectively declared that it was irrelevant that Muldrow had lawfully started providing services to the customers in dispute, that the services were provided at an expense to Muldrow, and that the customers depend upon Muldrow for the services provided. Under the Tenth Circuit's construction of § 1926(b), the simple occurrence of obtaining a federal loan can divest a municipality of its investments and prevent the municipality from continuing to provide service to its customers. This application of § 1926(b) thus has a retoractive effect on Muldrow as it applies to the services initiated prior to the loan and continuing thereafter.

The Takings Clause of the Fifth Amendment provides: ". . . nor shall private property be taken for public use, without just compensation." U.S. Const. Amend. V. This Court has identified several factors which determine whether there has been a "taking": the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the governmental action. *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224-25 (1986) (citing *Penn Cen-*

tral Transportation Co. v. New York City, 438 U.S. 104 (1978)). Application of these three standards to the case at bar demonstrates that the construction of § 1926(b) in the manner advanced by the Tenth Circuit creates Takings Clause considerations. With respect to the economic impact of the regulation, prohibiting Muldrow from continuing services would render the pipes, the water plants, the easements and all other assets used in providing the services, of no benefit to the municipality because there would be no use to which the property could be made. The application of the statute interferes with the reasonable investment-backed expectation of the municipality because in order to provide the water services the municipality made significant capital investments in expectation of continuing to provide services so that it could recoup the cost of the investment through the provision of such services. Finally, the application of the § 1926(b) as propounded by the Tenth Circuit exceeds that which is necessary to effect congressional intent.

Similarly, Due Process is implicated by the proposed interpretation because of its retroactive application. As recognized by Justice Kennedy:

> If retroactive laws change the legal consequences of transactions long closed, the change can destroy the reasonable certainty and security which are the very objects of property ownership. As a consequence, due process protection for property must be understood to incorporate our settled tradition against retroactive laws of great severity. Groups targeted by retroactive laws, were they to be denied all protection, would have a justified fear that a government once formed to protect expectations now can destroy them. Both stability of investment and confidence in the constitutional system, then, are secured by due process restrictions against severe retroactive legislation.

Eastern Enterprises v. Apfel, 524 U.S. 498, 548-49 (1998) (J. Kennedy concurring in result).

It is presumed that Congress was aware of the limitations on its action created by the Constitution and that it would act in accordance with those limitations. *Cf Debartolo*, 485 U.S. at 575 (stating that because Congress is bound by and swears an oath to uphold the Constitution, the courts will "not lightly assume that Congress intended to infringe constitutionally protected liberties. . . .") If Congress had intended to perpetuate a scheme whereby a property owner may be deprived of its property merely by the government extending a benefit, such as a loan, to another, it would have complied with the constitutional requirements and provided for compensation and the necessary due process. Congress did not do so. Furthermore, there is no evidence of congressional intent to effect such a result. The Tenth Circuit's opinion is noticeably lacking of any support for its holding. Faced with the constitutional issues created by the Tenth Circuit in the absence of congressional intent, it is incumbent on this Court to articulate a construction of § 1926(b), which would not raise such constitutional concerns.

In addition to the grave constitutional concerns raised by the holding of the Tenth Circuit, the *amici curiae* respectfully suggest that the Tenth Circuit's holding does not comply with the terms of the statute. As previously discussed, before a water association may even attempt to waive the shield of § 1926(b) as protection, the association must have a FmHA loan and must have made services available in the disputed area. 7 U.S.C. § 1926(b). However, the mere establishment of those two requirements does not end the analysis required by § 1926(b) to determine if it prohibits the challenged activities. Rather, § 1926(b) explicitly provides that it is only when the services of the rural water association

are curtailed or limited during the term of the loan that such actions are not acceptable under § 1926(b). Thus, assuming that the other conditions are met, it is only when a municipal corporation or other public body takes affirmative action during the term of the loan, such as running new water lines into the rural water association's service area, that its actions may be construed as violating § 1926(b). To have "curtailed or limited" the services of a rural water association, a municipal corporation would have to usurp, during the term of the loan, some service that the water association was providing. If a municipal corporation or public body provided certain services prior to the water association obtaining a § 1926(b) loan, and continued to provide the same services after the loan was obtained, it has not altered or affected the services which were offered by the rural water association at the time the loan was obtained or thereafter.

The Tenth Circuit went beyond the plain meaning of the statute to construct an interpretation which turns the protection of § 1926(b) into an aggressive instrument to be used by rural water associations to thwart legitimate competition. The Tenth Circuit would have this Court accept a construction of § 1926(b) which restricts the critical phrase of the statute—"during the term of the loan"—to a mere requirement that a rural water association obtain a FmHA loan to "force out" a competitor. There is no valid basis for such a restriction. Such a construction is troubling and the unjust ramifications of it are seen by its application to the case at hand.

Water service is one of the primary services provided by municipalities and municipal public boards. The effect of the Tenth Circuit decision, if left to stand, will be to stifle development of water services to rural customers by municipalities and public boards because of the threat that a rural water association could later obtain a FmHA

loan to destroy the municipalities' investment and service. Such a result was surely not intended by Congress.

The Tenth Circuit has enunciated a broad interpretation of § 1926(b) which requires a municipality or other public body lawfully supplying water to rural customers to discontinue service, and thereby lose its capital investments, merely upon the subsequent extension of a federal loan to a neighboring rural authority. The *amici curiae* respectfully suggest that such an interpretation raises legitimate Fifth Amendment Takings and Due Process concerns. Additionally, it is the position of the *amici curiae* that the Tenth Circuit has gone beyond the language of § 1926(b). All of these concerns may be avoided by the recognition of this Court that the protections and prohibitions of § 1926(b) only extend to actions taken by municipalities or public bodies after § 1926(b) protection has attached to a rural water authority, and not to the mere continuation of services already provided by the municipality or public body.

CONCLUSION

For the reasons set forth above, this Court should grant the Petition for a Writ of Certiorari, reverse the opinion of the United States Court of Appeals for the Tenth Circuit, and remand for entry of an opinion consistent with the opinion of this Court.

Respectfully submitted,

ROBERT E. SASSER *
TAMARA A. STIDHAM
THOMAS R. HEAD, III
SIROTE & PERMUTT, P.C.
One Commerce Street, Suite 700
P.O. Drawer 4539
Montgomery, Alabama 36103-4539
(334) 261-3400
* Counsel of Record